IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1295 OF 2005

Jagdish Devba Jadhav & Others ...Appellants

Vs.

Prakash Ramchandra Bhujbal & Others ...Respondents

Mr. A.Y.Sakhare, Sr.Adv. a/w Mr.Karpe i/b M/s.Y.K.S.Legal for the Appellants
Mr.Anilkumar Patil for the Respondent Nos.1 and 2.

CORAM: A.S.OKA, J.
DATED: MARCH 31,2006.

P.C.:

1. Heard learned Counsel appearing for the parties. Second Appeal is filed by the original Plaintiffs. The suit filed by the original Plaintiffs has been dismissed by the Trial court and the decree of the Trial Court has been confirmed by the Appellate Court. The learned Counsel for the Appellants submitted that the Appellants had relied upon the oral sale of the year 1973 effected by the original Plaintiff No.3 in favour of the Plaintiff Nos.1 and 2. He contended that in any event after the demise of Plaintiff No.3-Tukaram, other two Plaintiffs became entitled to the suit property on the basis of the Will dated 4th January 1980 executed by the said Tukaram. The case of the original Defendants was that the Plaintiff No.3-Tukaram had relinquished his rights in favour of the defendant Nos.1 to 3 and the said contention was negatived by the Trial Court on the basis of the evidence on

record. He invited my attention to the findings recorded by the Trial Court that none of the parties were in exclusive possession. He submitted that in view of the finding on issue No.9 regarding relinquishment deed by the original Defendants, the courts below ought to have passed a decree in favour of the Appellants.

2. I have considered the submissions. The Appellate Court in paragraph 12 of its Judgment has recorded that the learned Counsel for the Appellants made arguments only on the point of Will dated 4th January 1980. That is the reason why the Appellate Court has dealt with only one controversy regarding execution of Will dated 4th January 1980 allegedly executed by the Plaintiff No.3-Tukaram. The Appellate Court is not under any obligation to decide the points which are not raised at the time of actual hearing of the Appeal. Merely because certain points are raised in the Memorandum of Appeal, the Appellate Court is not obliged to consider the said points unless the same are argued before it. In the present case, as pointed out earlier, the Appellants argued only one point regarding execution of the Will dated 4th January 1980. Therefore, the Appellate Court was justified in not considering any other points.

3. So far as the Will is concerned, the Appellate Court has examined oral and documentary evidence on record. The

Appellate Court has disbelieved the version of the alleged attesting witness to the Will by recording reasons for that. The Appellate Court noted that one of the attesting witnesses stated that the deceased Tukaram purchased the stamp paper from the bond writer and on that paper alleged Will was scribed. The original Will was not on stamp paper. The Appellate Court considered the discrepancies and inconsistencies in the oral evidence and recorded a finding of fact that the Will is not proved. It is not possible to interfere with the said finding of fact in a Second Appeal under Section 100 of the Code of Civil Procedure, 1908. Second Appeal is dismissed with no order as to costs.

Judge.